

UNITED STATES DISTRICT COURT
MIDDLES DISTRICT OF PENNSYLVANIA

JOHN HUBER

Plaintiff,

v.

PRO CUSTOM SOLAR LLC, D/B/A
MOMENTUM SOLAR

Defendant.

NO. NO. 19-CV-1090-RDM

CLASS ACTION

JURY TRIAL DEMANDED

ORDER

AND NOW this _____ day of _____, 2019 on consideration of the attached motion to dismiss pursuant to F.R.C.P. 12(b)(6), the motion is GRANTED.

Dated: _____

Robert D. Mariani
United States District Judge

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Defendant.

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PRO CUSTOM SOLAR LLC MOTION TO DISMISS PURSUANT TO
F.R.C.P. 12(b)(6)

1. Plaintiff filed the captioned civil action as a class action complaint for alleged violation of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. §227.

2. The Factual Allegation portion of plaintiff's complaint includes only pro forma conclusory language rather than specific factual allegations giving rise to plausible entitlement to relief.

3. More specifically, plaintiff has failed to plead facts sufficient to give rise to a plausible claim that:

a. The subject calls were "telephone solicitation";

- b. The subject calls were placed to a “residential telephone line”;
and
- c. Defendant Pro Custom Solar or its agents initiated the calls.

WHEREFORE, defendant, Pro Custom Solar LLC, respectfully requests that Your Honorable Court enter the attached order dismissing plaintiff’s complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted:

/s/ George W. Westervelt, Jr.
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CERTIFICATION OF NON-CONCURRENCE

George W. Westervelt, Jr. attorney for Pro Custom Solar certifies that he has sought concurrence in this motion from plaintiff's counsel and concurrence has been denied.

/s/ George W. Westervelt, Jr.
GEORGE W. WESTERVELT, JR.